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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/992,392	11/06/2001	David K. Locke	47079-0119	7604

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EXAMINER	
MARKS, CHRISTINA M	
ART UNIT	PAPER NUMBER
3713	

DATE MAILED: 01/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/992,392	LOCKE ET AL.	
	Examiner	Art Unit	
	C. Marks	3713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 September 2003*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-33* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-33* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Specification

The objection to the specification for the use of trademarks without capitalization has been withdrawn due to the amendment filed 15 September 2003.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 3, 5, 6, 8-10, 12-13, 15-16, 18, 20-21, 23-26, 28-29 and 31-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over SUPERIOR RACES (Superior Confection Company of Columbus Ohio, disclosed by Marshall Fey).

Superior discloses a slot machine that comprises a rotatable reel that bears a plurality of discrete symbols (colored horses) and a continuous graphical element (trail that represents a road the horses must travel (as simulated by a race) on is connecting the horses) between adjacent discrete symbols such that the symbols are unified (FIG 1). These discrete symbols move between each symbol position (unified by the graphical element) as the reel is rotated and the horses move

from position to position up to the point where each horse stops in a certain position at the end of the rotation. The slot machine also includes means for rotating and stopping the reel (gears and motor from FIG 1) in order to allow the symbols to move relative to the continuous graphical element (wherein the symbols have a connection to the element and are always moving relative to the movement of the element) and upon stopping place the discrete symbols on the reel in visual association with a display (FIG 2, see horse symbols shown in display window).

Fey does not disclose that a processor controls this process of rotating and stopping. However, one of ordinary skill in the art understands that in attempts to modernize slot machines, most of the currently produced machines involve the use of a processor to control the mechanical functions of the gaming machine. Thus, the usage of a processor to control the rotation and stopping of the Fey device would be obvious to one of a skilled artisan as such techniques are the current industry standard in attempts to update the slot machines. One of ordinary skill in the art would be motivated, for example, to use a processor in order to allow for more sophisticated gaming, greater control of paytable, as well as the ability to reduce the risk of mechanical breakdown from the numerous and different parts required for a solely mechanical operation.

Regarding claims 3, 16, 24, and 32, the machine possesses a means for determining a payout at least in part based on the discrete symbols displayed in the portion associated with the display area, as it is disclosed that the horses are in various colors to represent the type of payouts that are standard with a slot machine (Fey). The reel will be rotated which will cause the discrete symbols to move between the adjacent ones of the discrete symbol positions as the reel is rotated. The payout will hence then be determined based on the result of the movement of the discrete symbols to other adjacent symbol positions as the reel is rotated.

Regarding claims 5-6, 12-13, 20-21, and 28-29, Fey discloses the continuous graphical element to be a trail that represents a road the horses must travel (as simulated by a race) on is connecting the horses.

Regarding claims 8, 15, 23 and 31 it is well known in the art that the among the type of motors used in slot machines are stepper motors and the use of such would be obvious to a skilled artisan motivated by the ease as well as other positive properties associated with the stepper motor (reliable, cost effective, known function, ease of installation).

Regarding claim 18, additionally to the functionality disclosed above, the device receives a wager from the player (FIG 2, 5 cent coin slot).

Claims 4, 7, 11, 14, 19, 22, 27 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over SUPERIOR RACES (Superior Confection Company of Columbus Ohio, disclosed by Marshall Fey) in view of Taylor (US Patent No. 6,569,013).

What SUPERIOR RACES (Superior Confection Company of Columbus Ohio, disclosed by Marshall Fey) discloses has been discussed above and is incorporated herein.

Superior does not disclose that the gaming device is available in a simulated video display.

However, it is notoriously well known in the art and thus would be obvious to automate mechanical reel slot machines into simulated video display in order to build cheaper and longer lasting machines. One of ordinary skill in the art would be motivated to make this incorporation in order to reduce the number of mechanical parts required for the machine, thus reducing the chance that a motor, gear, or rod would malfunction. In the matter of changing mechanical to electrical, Taylor supports well known act of doing so by stating that a traditional non-video slot machine equipped with mechanical reels is largely the same as a video slot (Column 1, lines 63-65).

Therefore, because of the fact that changing a mechanical slot into a video slot is so well-known and based upon the fact, as disclosed by Taylor, that both types of machines are largely the same, it would have been obvious to one of ordinary skill in the art to simulate the device of Superior into a video display wherein the symbols and the reel are simulated in order to allow for the machine to be a cheaper manufacture as well as for further motivations disclosed above. Further, in order to accomplish this incorporation, one of ordinary skill in the art would understand that they would have

to superimpose the symbols over the graphical element in order to keep the same functionality and appearance as shown in the Superior gaming device.

Claims 17 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over SUPERIOR RACES (Superior Confection Company of Columbus Ohio, disclosed by Marshall Fey) in view of Gerrard et al. (US Patent No. 6,494,785).

What SUPERIOR RACES (Superior Confection Company of Columbus Ohio, disclosed by Marshall Fey) discloses has been discussed above and is incorporated herein.
Superior discloses that the payout is determined based upon the result of the movement of the symbols between different symbol positions.

Superior does not disclose that a payout accumulates based on the position traversed by each the discrete symbol.

Gerrard et al. teach of a bonus game wherein a symbol traverses from position to position with an aim of reaching a destination location (Abstract). The bonus paid to the player is based upon the position traversed by the player and the bonus accumulates as the player gets closer to the destination (Column 7, lines 44-47). Gerrard et al. also discloses that this type of bonus scheme adds excitement to bonus rounds and increases player entertainment (Abstract).

Though Superior does not disclose the use of the bonus game, the state of the art at the time of conception of the game was not that which it is now. Presently in the state of the art, it is notoriously well known to use bonus features as a means to enhance the player's perception of receiving a larger award.

Therefore, it would have been obvious to one of ordinary skill in the art to incorporate such a bonus game into the system of Superior. Further, it would have been obvious to incorporate a bonus game as disclosed by Gerrard et al. into the gaming device of Superior. One of ordinary skill in the art would be motivated to make this incorporation as the bonus game of Gerrard et al. involves a racing theme that is already present in the device of Superior. Further, one of ordinary skill in the

art would be motivated to use the Gerrard et al. bonus feature as it is disclosed the type of bonus scheme disclosed by Gerrard et al. adds excitement to the bonus round and increases the player entertainment which are well known goals in the gaming industry.

Response to Arguments

Applicant's arguments filed 15 September 2003 have been fully considered but they are not persuasive.

Regarding the Applicant's argument that Superior does not alter the position of its discrete symbols relative to the continuous graphical element, the Examiner respectfully disagrees. The symbols always move relative to the graphical element. The movement of the symbols is in relation and connection to the graphical element; therefore, the movement is relative. Superior therefore encompasses relative movement, as the movement of the horses is dependent on or interconnected with that of the trail.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Marks whose telephone number is (703)-305-7497. The examiner can normally be reached on Monday - Thursday (7:30AM - 5:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teresa J Walberg can be reached on (703)-308-1327. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-1148.

cmm
January 13, 2004

MICHAEL O'NEILL
PRIMARY EXAMINER